

purpose. For example, when the Minnesota affiliate sought a contract from the State of Nebraska, the NCPG asked that Minnesota withdraw its bid and support the efforts of the Nebraska affiliate. As a result, the Minnesota affiliate decided not to actively pursue the contract. When the Minnesota affiliate offered a gambling counselor training program in the State of Missouri, the NCPG warned that it would not grant credit for the training, thereby discouraging students from signing up for the program. Consequently, the Minnesota affiliate dropped the program. The in-state program that ultimately was provided was inferior because it employed less qualified instructors than the Minnesota affiliate proposed to use. In at least one instance, the Minnesota affiliate bid successfully in another state. It won a contract with the Arizona lottery by offering a far more comprehensive program than did the in-state affiliate. The Arizona affiliate complained to the NCPG, precipitating a hearing on sanctions against the Minnesota affiliate.

III. Explanation of the Proposed Final Judgment

A. Prohibited Conduct

The proposed Final Judgment prohibits the defendant from engaging in multiple categories of prohibited conduct. These prohibitions are intended to prevent the defendant from using a territorial allocation scheme to pressure PGSPs not to cross state lines to compete for contracts. These provisions will also bar the defendant from adopting policies which imply that competition between PGSPs across state lines is unethical, unprofessional, or contrary to the policy of the NCPG.

Section IV.A of the proposed Final Judgment contains a general prohibition against any agreement by the defendant that hinders any PGSP from: (1) Selling problem gambling services in any state or territory or to any customer; or (2) submitting competitive bids in any state or territory or to any customer. Section IV.B contains a prohibition against any agreement, code of ethics, rule, by-law, resolution, policy, guideline, standard, certification, or statement which implies that the competitive practices listed in Section IV.A are unethical, unprofessional, or contrary to NCPG policy. Section IV.C prohibits the defendant from adopting, disseminating, publishing, seeking adherence to, facilitating, or enforcing any standard or policy that: (1) Requires any PGSP to obtain permission from, inform, or consult with any other PGSP before

submitting a bid or making a sale in any state or territory or to any customer; (2) requires any PGSP to contract with, provide a fee to, or a portion of revenues to, or otherwise remunerate any other PGSP as a result of selling in any state or territory or to any customer; (3) sanctions, penalizes, or otherwise retaliates against any PGSP for competing with any other PGSP; or (4) creates or facilitates an agreement not to compete between two or more PGSPs.

B. Limiting Conditions

Section V of the proposed Final Judgment contains certain limiting provisions that clarify the scope of the prohibitions in Section IV. Section V identifies specific activities that are unlikely to restrict competition and are not prohibited by the decree. Specifically, Section V.A states that nothing in the proposed Final Judgment limits any individual NCPG member from acting independently in negotiating any terms of its business relationships. Section V.B states that NCPG members may enter into valid joint ventures, as long as such activities do not violate any of the provisions of Section IV. Finally, Section V.C states that the NCPG retains the right to sanction or terminate any member according to the process described in its by-laws, provided that such activities do not violate any provision contained in Section IV.

C. Additional Relief

Section VI of the proposed Final Judgment requires the defendant to publish a notice describing the Final Judgment in Card Player magazine, a gambling industry publication, within sixty (60) days after the proposed Final Judgment is entered. Section VI also requires that written notice be sent to all current members of the NCPG within thirty (30) days after the proposed Final Judgment is entered. A copy of the written notice also must be sent to each new member of NCPG during the ten-year life of this Final Judgment.

Section VII requires the defendant to designate an Antitrust Compliance Officer who shall not be an officer or director of an affiliate of the NCPG, and to set up an antitrust compliance program to ensure that its members are aware of and comply with the prohibitions in the proposed Final Judgment and the antitrust laws. Defendant must furnish a copy of the Final Judgment and this Competitive Impact Statement to each of its officers, directors, and non-clerical employees who address issues related to the provision of problem gambling services. To ensure compliance with the Final

Judgment, the Antitrust Compliance officer is also required to: (1) Conduct a program at each NCPG annual meeting on the antitrust laws; (2) review the NCPG code of ethics, rules, by-laws, resolutions, guidelines, agreements and policy statements; (3) review the purpose for the creation of each NCPG committee and sub-committee; and (4) attend all meetings of the NCPG affiliates committee and review the proceedings.

Section VIII requires the defendant to certify the designation of an Antitrust Compliance Officer and the distribution of the notice required by Section VII. It also requires the defendant to submit to the United States an annual statement regarding defendant's compliance with the Final Judgment. If the Antitrust Compliance Officer learns of any violations of the Final Judgment, defendant must take appropriate steps to terminate the activity so as to comply with the Final Judgment.

Section IX of the proposed Final Judgment provides that, upon request of the Department of Justice, the defendant must submit written reports, under oath, with respect to any of the matters contained in the Final Judgment. Additionally, the Department of Justice is permitted to inspect and copy all books and records, and to interview defendant's officers, directors, employees, and agents.

D. Effect of the Final Judgment

The parties have stipulated that the Court may enter the proposed Final Judgment at any time after compliance with the APPA. The proposed Final Judgment states that it shall not constitute any evidence against or an admission by either party with respect to any issue of fact or law. Section III of the proposed Final Judgment provides that it shall apply to the defendant and each of its officers, directors, agents, employees, successors, and assigns and to any organization to which it is to be merged or reorganized, or by which it is to be acquired.

The Government believes that the proposed Final Judgment is fully adequate to prevent the continuation or recurrence of the violations of Section 1 of the Sherman Act alleged in the Complaint, and that disposition of this proceeding without further litigation is appropriate and in the public interest.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover